

Appl. No. 10/039,527
Amdt. dated April 21, 2004
Reply to Office Action of September 22, 2003

REMARKS

The Applicant thanks the Examiner for the brief telephone conference that took place on March 22, 2004 and during which the "opacity" limitation of claim 1 was discussed with the Examiner *vis-a-vis* the art on which the Examiner rejected the claims under §103. For reasons set forth below, the Applicant re-asserts that pending claims 1 -4 are allowable and upon entry of the foregoing amendments to the claims, claims 6-14 will be allowable as well.

The Applicant requests that the above-identified amendment be entered under Rule 116(c), even though a final rejection has been issued. The claims as amended above render them allowable over the prior art and no new search will be required by the amendment. Filing an RCE will needlessly burden the PTO and the Examiner with additional paper and delay issuance of the Applicant's patent as well as needlessly incur additional expense to the Applicant.

Elected claims 1-14

In the Final Rejection mailed February 26, 2004, claims 15-21 were withdrawn from further consideration. By this amendment, claims 15-21 have been cancelled.

Claim 8 objected to, but claim 9 required correction

Claim 8 was identified in the Office Action as requiring correction of the word "if" to "is. After carefully studying claim 8, the Applicant believes the Examiner meant to object to claim 9, which misspelled the word "is" to be "if."

Claim 5 objected to

Claim 5 was objected to because its limitations were copied into claim 1 by the last amendment. Claim 5 has been cancelled.

Claims 1-14 were rejected under 35 USC §112, ¶2

The Examiner rejected the claim under §112, ¶2 because of the preamble's language. The Applicant contends that the claim does not require amendment. Nevertheless, to expedite issuance, claim 1 has been amended as suggested by the Examiner on page 3 of the February 26th Office Action. On entry of the amendment, the rejection of claims 1-5 under §112, ¶2 should therefore be withdrawn.

Claims 6-10 were rejected because "the web section" was not recited in the claims. In addition, a Claim 6 has been amended as suggested by the Examiner, to reinstate a limitation that was inadvertently left out of the transcription of claim 6 in the last amendment. Inasmuch as this

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limitation was in the claim as it was originally filed, the limitation is not being added so as to give rise to prosecution history estoppel. If the Examiner contends that reinstating the limitation was actually added, the Applicant requests the Examiner to set forth her reasons why. The rejection of claims 6-10 should be withdrawn.

Notwithstanding the Applicant's disagreement with the rejection of claim 1, the claim has been amended to add a step that calls for the attachment of a zipper strip segment to a web. The "web" referenced in this limitation is described in the specification as being material from which a flexible bag is constructed. The rejection of claims 1-4 under §112, ¶2 should be withdrawn.

Claim 5 has been cancelled.

As for claim 13, it has been amended to claim an "optical sensor" which is recited in the claim from which it depends. The rejection of claim 13 under §112, ¶2, should be withdrawn.

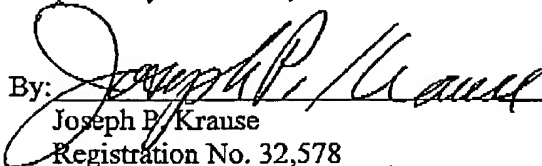
Claims 6-14 track claim 1

Claim 6 has been amended to add a limitation that the splotch is detected by detecting opacity variation. Inasmuch as this limitation, which is in claim 1, is not in the prior art, claim 6 should be allowed. Claims that depend on claim 6 and which further narrow and claim additional subject matter should also be allowed to issue.

Conclusion

In light of the foregoing amendment to the application, the Applicant requests that the pending claims be allowed to issue. Should the Examiner wish to discuss the application, he is invited to call the undersigned at his convenience.

Respectfully submitted,

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